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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

WILLIAM SHAWN STURGES,

Defendant and Appellant.

F073701

(Super. Ct. Nos. CRF34899S,  
CRW47099)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Tuolumne County. Donald I. Segerstrom, Jr., Judge.

Allan E. Junker, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Rachelle Newcomb and William K. Kim, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Smith, Acting P.J., Meehan, J. and Snauffer, J.

Pursuant to a negotiated plea agreement, William Shawn Sturges (appellant) pled guilty to second degree robbery (Pen. Code, § 211)<sup>1</sup> and admitted he personally used a firearm (§ 12022.53, subd. (b)). The People agreed to dismiss all remaining allegations, including two prior strike allegations, and appellant was sentenced to a stipulated prison term of 11 years.

On appeal, appellant contends inaccurate representations by the trial court and erroneous advice of counsel led him to falsely believe he was facing a much higher maximum sentence if found guilty at trial. He claims he relied on the trial court's assertions that one of his two priors constituted a strike, and that the trial court could not impose one-third of the sentence for the use of a firearm enhancement. He further claims his counsel was ineffective for failing to correct these allegedly erroneous assertions and provide competent advice. We conclude the record on direct appeal is insufficient to support appellant's claims, and affirm.

### **FACTUAL AND PROCEDURAL BACKGROUND**

On April 13, 1999, the Tuolumne County District Attorney's Office filed a complaint charging appellant with second degree robbery with the use of a firearm. The complaint further alleged appellant suffered two "prior convictions of a serious or violent felony or juvenile adjudication" within the meaning of section 667, subdivisions (b)-(i) for violations of "459 PC." The complaint listed the "CONV. DATE" of the priors as November 25, 1992, and November 25, 1996. Additionally, the complaint alleged appellant's 1996 prior was also a prison prior pursuant to section 667.5, subdivision (b).

Appellant's charges were based on an April 5, 1999, incident during which he allegedly robbed a convenience store at gunpoint. After his arrest, appellant was also charged in Stanislaus County Superior Court with the robbery of a bank, also alleged to

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

have occurred on April 5, 1999. In 2002, the Stanislaus County Superior Court sentenced appellant to 27 years four months in state prison for convictions arising out of the bank robbery.

In January 2014, appellant was removed from state prison and brought to Tuolumne County Superior Court to face charges for the convenience store robbery.<sup>2</sup> The court appointed the Tuolumne County Public Defender's Office to represent him. At an initial pretrial hearing, the court stated appellant has "two serious or violent priors," and his case is a "three strikes kind of a case." Appellant's counsel did not challenge the court's assertion. Appellant subsequently waived his right to a preliminary hearing, and the People filed an amended information adding an allegation that appellant's prior convictions constituted five-year priors pursuant to section 667, subdivision (a)(1).

At a pretrial hearing in November 2014, the following exchange occurred on the record:

"THE COURT: Now, there was a discussion in chambers about a possible disposition in this case, and we discussed whether or not, Mr. Sturges, the enhancement could be reduced and it cannot. It doesn't carry a triad of, say, three, five, or ten. It just carries ten years, so there is no lower term for that. And I explained that—I explained that I cannot give a lower term. I can just give ten years if that is imposed, and you had a question about that, apparently.

"[APPELLANT]: Yea. It is a flat ten years consecutive, but isn't it one-third of the mid term?

"THE COURT: No. It is only one-third if it is a triad, and the legislature set this one out as just ten years. It is not three, five, ten, or something like that. If there were three, five, ten, then I could go one-third of the mid-term."

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<sup>2</sup> Prior to disposition, the trial court denied appellant's "Motion to Dismiss for Lack of Speedy Prosecution." Appellant does not challenge the trial court's denial of this motion on appeal.

Appellant's counsel did not challenge the court's assertion. At the end of the pretrial hearing, appellant's counsel stated the parties had not reached a resolution, and the case was continued for a further pretrial hearing.

Over the next two months, the court held two additional pretrial hearings. The hearings were brief and included no discussion of plea negotiations or the validity of appellant's prior strike.

Appellant entered into a negotiated plea agreement in March 2015. Appellant pled guilty to robbery, admitted the use of a firearm enhancement, and was sentenced to one year for the robbery (one-third the middle term of three years pursuant to section 1170.1, subdivision (a)) and 10 years for the firearm enhancement, for a total sentence of 11 years to be served consecutively to his current prison sentence. Pursuant to the plea agreement, the People dismissed all remaining allegations, including appellant's two prior strike allegations and prior serious felony allegations.

### **DISCUSSION**

Appellant contends the trial court's statements that his 1992 prior constituted a strike and the court's assertion that it was unable to impose one-third of the sentence for the use of a firearm enhancement rendered his plea involuntary. Appellant also claims his attorneys were ineffective by failing to correct the court's inaccurate statements and provide him with competent counsel.

"It is elementary that the function of an appellate court, in reviewing a trial court judgment on direct appeal, is limited to a consideration of matters contained in the record of trial proceedings ...." (*People v. Merriam* (1967) 66 Cal.2d 390, 396-397, overruled on other grounds in *People v. Rincon-Pineda* (1975) 14 Cal.3d. 864, 882.) As we explain below, the record before this court is insufficient to support appellant's claims.

## **I. Prior Strike Conviction or Adjudication**

Appellant's claims are based on his assertion that his 1992 prior could not have legally constituted a strike. We begin by considering whether the record supports this assertion.

The information states the conviction or adjudication in question occurred on November 25, 1992. It specifies the conviction or adjudication was based on a violation of section 459 but does not specify a degree. Appellant's California Law Enforcement Telecommunications System (CLETS) rap sheet shows appellant was sent to the California Youth Authority (CYA) based on a first degree burglary adjudication on December 22, 1992. The record on appeal does not establish the date the prior offense was committed, nor does it contain police reports or other records detailing the facts underlying the offense.

An adult criminal conviction for first degree burglary constitutes a strike. (§ 667, subd. (d)(1); § 1192.7, subd. (c)(18).) A juvenile adjudication for first degree burglary alone does not constitute a strike unless additional circumstances are proven. Pursuant to section 667, subdivision (d)(3)(A), a juvenile adjudication is a strike if the offender was over the age of 16 at the time of the commission of the offense, and the offense is listed in Welfare and Institutions Code section 707, subdivision (b). While first degree burglary is not specifically listed, Welfare and Institutions Code section 707, subdivision (b) lists any felony in which the offender personally used a firearm, as described in section 12022.5, subdivision (a), and any felony in which the victim is a person over the age of 60 or disabled, as described in section 1203.09. (Welf. & Inst. Code, § 707, subds. (b)(16)-(17).)

Given the limited record before this court, it is impossible to determine whether appellant's 1992 prior could have constituted a strike. Appellant reached the age of 18 on

November 16, 1992, nine days before the conviction or adjudication date of the prior.<sup>3</sup> It is possible he committed the alleged first degree burglary after he reached the age of 18, which would qualify the prior as a strike. Even if appellant was under the age of 18 at the time of the offense, the record does not foreclose the possibility appellant was adjudged a ward of the court for an offense listed in Welfare and Institutions Code section 707, subdivision (b). Appellant's prior may have been for first degree burglary with the use of a firearm or against a victim described in section 1203.09, and such information was not contained in the brief descriptors of the prior on appellant's charging documents or his CLETS rap sheet. Additionally, it is possible the People successfully petitioned the juvenile court to transfer appellant to adult criminal court pursuant to former Welfare and Institutions Code section 707, subdivision (a) (Assem. Bill No. 1780 (1990-1991 Reg. Sess.)) (Stats. 1991, ch. 303, § 1), and petitioner was convicted of first degree burglary in adult criminal court. Even if he was tried as an adult, the criminal court would still have had jurisdiction to commit appellant to CYA. (Welf. & Inst. Code, § 1731.5, subd. (a); see *People v. King* (1993) 5 Cal.4th 59, 64-65.) Therefore, on this record there are multiple ways in which it is reasonably possible appellant's prior could have constituted a strike.

## **II. Ineffective Assistance of Counsel**

Appellant contends his trial counsel failed to advise him that his 1992 prior may not have constituted a strike and failed to correct the trial court's erroneous assertion it was required to impose the full 10-year sentence for the section 12022.53, subdivision (b) use of a firearm enhancement. Appellant claims that because of his trial counsel's deficient performance he was coerced into accepting the People's plea bargain because he was led to believe he would face a sentence of at least 25 years to life if found guilty at trial.

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<sup>3</sup> Appellant's date of birth is November 16, 1974.

To prevail on an ineffective assistance of counsel claim, appellant must establish counsel's performance fell below an objective standard of reasonableness, and prejudice occurred as a result. (*Strickland v. Washington* (1984) 466 U.S. 668, 687; *People v. Hernandez* (2012) 53 Cal.4th 1095, 1105; *People v. Bradley* (2012) 208 Cal.App.4th 64, 86.) Appellant has the burden of showing both deficient performance and resulting prejudice. (*People v. Lucas* (1995) 12 Cal.4th 415, 436.) In the context of a plea agreement, "prejudice can be measured by determining whether counsel's acts or omissions adversely affected defendant's ability to knowingly, intelligently and voluntarily decide to enter a plea of guilty." (*People v. McCary* (1985) 166 Cal.App.3d 1, 10.)

In assessing the reasonableness of counsel's conduct, the appellate court is to defer to counsel's tactical decisions, and there is a strong presumption that counsel's conduct falls within the range of reasonable professional assistance. (*People v. Lucas, supra*, 12 Cal.4th at p. 436.) The appellate court will intervene "only if the record on appeal affirmatively discloses that counsel had no rational tactical purpose for his act or omission." (*People v. Fosselman* (1983) 33 Cal.3d 572, 581.) "We have repeatedly stressed 'that "[if] the record on appeal sheds no light on why counsel acted or failed to act in the manner challenged[,] ... unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation," the claim on appeal must be rejected.' [Citations.] A claim of ineffective assistance in such a case is more appropriately decided in a habeas corpus proceeding." (*People v. Mendoza Tello* (1997) 15 Cal.4th 264, 266-267.)

We conclude appellant's claim is not supported by the record. As noted above, it is unclear whether appellant's prior constituted a strike. Additionally, the record does not show what efforts trial counsel undertook to investigate the validity of the prior strike allegation, nor does it detail how counsel advised appellant as to the validity of the prior, or about his case generally. There is no record of the privileged conversations between

appellant and counsel, and there are no statements from appellant describing the advice he was given and how it impacted the decisions he made. Simply put, the parties have not been afforded an opportunity to explain themselves.

If appellant is correct that his 1992 prior was not a strike, he may be able to develop a valid ineffective assistance of counsel claim by way of a petition for writ of habeas corpus. We agree the trial court's statement it could not impose one-third of the 10-year term for the section 12022.53, subdivision (b) enhancement was erroneous because section 1170.1, subdivision (a) provides, "The subordinate term for each consecutive offense ... shall include one-third of the term imposed for any specific enhancements applicable to those subordinate offenses." Appellant was serving a prison sentence for another case, so the one-third limitation should have applied to his robbery charge and the use of a firearm enhancement. If appellant was facing only one prior strike, his maximum exposure would have been only four months higher than the stipulated 11-year sentence to which he pled.<sup>4</sup> Although it seems unusual that counsel would advise a client to accept such a plea bargain, "[a]n appellate court should not ... brand a defense attorney incompetent unless it can be truly confident all the relevant facts have been developed ...." (*People v. Mendoza Tello*, *supra*, 15 Cal.4th at p. 267.) This is not a situation where there is " 'no conceivable tactical purpose' " for counsel's actions. (*People v. Lewis* (2001) 25 Cal.4th 610, 675.) For example, it is possible appellant's counsel discovered his 1992 prior did constitute a strike and advised him to accept an 11-year offer to avoid a potential three strikes sentence. Without additional

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<sup>4</sup> If appellant were facing only one prior strike allegation, we calculate his maximum possible exposure of 11 years four months as follows: (1) One-third of the three year middle term for robbery (one year), doubled pursuant to section 667, subdivision (e)(1) (two years); (2) Three years four months for the section 12022.53, subdivision (b) use clause; (3) Five years for the section 667, subdivision (a)(1) prior; and (4) One year for the section 667.5, subdivision (b) prior.

information that potentially could be developed through the habeas process, we cannot draw any conclusions about the effectiveness of counsel in this case.

### **III. Voluntariness of Appellant's Plea**

“A defendant’s guilty plea must be knowing, intelligent, and voluntary. [Citation.] A plea with those qualities presupposes the defendant knows of all the ‘direct consequences’ of his plea.” (*People v. Aguirre* (2011) 199 Cal.App.4th 525, 528.) Direct consequences of a plea “are those that ‘ “follow inexorably” ’ from the plea,” including “the permissible range of punishment ....” (*Ibid.*) Where the court fails to accurately advise a defendant of the direct consequences of the plea, the plea must be set aside only if the record reflects the defendant was prejudiced by the error, meaning that the defendant would not have accepted the plea had the court advised him or her properly. (*People v. Fain* (1983) 34 Cal.3d 350, 358.)

As noted above, we agree the court’s assertion it was prohibited from imposing one-third of the sentence for the use of a firearm enhancement was erroneous.<sup>5</sup> Also, as noted above, the record does not conclusively establish whether appellant’s 1992 prior could have constituted a strike. By accepting the 11-year plea bargain, appellant avoided the possibility of receiving a sentence of at least 25 years to life. The record does not foreclose the possibility appellant received a considerable benefit by accepting the plea bargain. Therefore, appellant has not shown a reasonable probability he would not have accepted the plea deal even had he been properly advised.

### **DISPOSITION**

The judgment is affirmed.

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<sup>5</sup> Although the trial court acted in excess of jurisdiction because it was required to sentence appellant to three years four months in state prison for the use of a firearm clause instead of 10 years, the plea agreement is not invalid if appellant “received the benefit of a plea bargain, i.e., an avoidance of ‘the possibility of an even greater liability ....’ ” (*People v. Jones* (1989) 210 Cal.App.3d 124, 133.)